

**TOWN OF ELSMERE
BOARD OF ADJUSTMENTS
MEETING MINUTES
OCTOBER 15, 2008
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

At this time there was a moment of silence in remembrance of Board Member John Mitchell whom passed away.

CALL TO ORDER:

ROLL CALL:

Board Member Robert Husfelt – Present
Board Member James Personti – Present
Board Member John Smith – Present
Board Member Thomas Manuel – Absent
Chairman Paul Chalfant – Present

APPROVAL OF MINUTES:

None

OLD BUSINESS:

None

NEW BUSINESS:

The Board of Adjustment Reviewed Petition 08-10 tax parcel number 1900-500-042 known as 601 Kirkwood Hwy.

Mr. Anthony Medori presented his application for a variance to the parking requirements to allow his property known as 601 Kirkwood Hwy to be divided into two separate businesses.

Mr. Medori gave a brief history of the property describing the state of the building when he purchased the property. He explained the changes that he has made such as reconstructing almost half of the existing building, constructing ADA compliant restrooms, and installing a handicap ramp to allow access to the non ground level portions of the building. He explained that the Country Health Store that is proposed to occupy the building will occupy 1,706 sq. ft. of the building. The Barber shop that is proposed to occupy the second portion of the building will

be occupying 550 sq. ft. of the building. The barber shop will consist as a waiting area, a wash area and a few cutting stations. He explained that the Country Health store would require 10 spaces of parking per the Town of Elsmere Code Requirements and the Barber shop would require an additional 8 spaces per the Town of Elsmere Code Requirements, bringing the total number of required parking spaces to 18 spaces including 2 ADA Compliant spaces. He presented that the property currently has a total of 8 parking spaces on site, he has secured a written agreement with King Tex Mex Restaurant to mark 4 spaces in the rear of the restaurant for employee parking of the business located at 601 Kirkwood Hwy which will be clearly marked for the restaurant patrons to see, alleviating the amount of parking at the property and allowing it to be used for patrons only. The County Health store operating hours will be 9:15 a.m. – 7:00 p.m. on Mondays, Tuesdays, and Saturdays, 9:15 a.m. – 8:00 p.m. Wednesdays, Thursdays and Fridays, 9:15 a.m. – 5:00 p.m. on Sundays. The Barber Shop will be open from 9:30 a.m. – 6:00 p.m. Tuesday – Friday and 9:00 a.m. – 2:00 p.m. on Saturdays.

Chairman Chalfant asked Mr. Medori how many chairs there would be in the barber shop.

Mr. Medori responded with 4 chairs in the shop, there will be 2 Full time barbers and 2 part time barbers, however there is only going to be 2 barbers working at a time. He stated that the part time employees would not share stations so even though they are not there all the time they will have their own stations.

Chairman Chalfant verified that the King Tex Mex Restaurant has granted approval to occupy 4 spaces at the restaurant for employee parking.

Mr. Medori answered yes and provided the Board with a copy of the written agreement with the restaurant.

Board Member Smith asked Mr. Medori how many employees would be in the Country Health Store at one time.

Mr. Medori stated that there would be 2 employees in the Country Health Store at any time.

Chairman Chalfant questioned Mr. Medori asking what the Planning Commission Restrictions were.

Mr. Medori responded and said that the Planning Commission had instructed him to install a 4' privacy fence with a gate along the rear of the property that backs up to the residential properties.

Member Smith asked Mr. Medori when the fence would be installed.

Mr. Medori stated that the fence would be installed in about a week from the date of the meeting.

Board Member Personti stated that he would like to see the barber shop have no more than two people operating at any time.

Mr. Medori stated that the business at the barber shop would be staggered.

Member Personti asked if the Barber shop allowed walk-ins or if it was by appointment only.

Mr. Medori stated that the tenant is currently operating out of his home and it is by appointment only, however he is not sure whether that will change with the new location or not however he does believe that there will be some degree of walk-in customers.

Mr. Personti asked if the parking would be designated per store or if the parking would be commonly shared between uses.

Mr. Medori stated that the parking would be shared however the employees would park at the restaurant.

Chairman Chalfant asked if the Board had any further questions for Mr. Medori.

Chairman Chalfant opened the discussion up to public comment.

Mr. Fred Carlson of 104 Western Ave, he did state that there was a confusion with the notification regarding the meeting dates and the signs at the property. He stated that at the Planning Commission meeting Mr. Medori presented his application with the proposal that the barber shop would have one or two chairs, however at this meeting he is now proposing 4 chairs. He is concerned with the number of stations being proposed and there not being sufficient parking for those stations. He also stated that the handicap ramp is very large and should have been constructed differently to take up less space then it does, he does not agree that Mr. Medori did not have to apply for the ramp in a public meeting for the ramp construction.

Chairman Chalfant asked if there were any further public comments.

Chairman Chalfant asked Mr. Medori to please step back up to the Podium. He questioned Mr. Medori why he went from proposing 1 Chair in the barber shop at the Planning Commission to proposing 4 Chairs in the barber shop in this meeting. He asked what the Planning Commission had based their vote on.

Mr. Medori stated that the Planning Commission did not give number that was allowed they were concerned with the number of people in the business.

Chairman Chalfant expressed that if he expressed to the Planning Commission that there would be one possibly two chairs located in the barber shop that he had to go with their recommendation.

Mr. Carlson stated that at the Planning Commission Meeting the subject of 4 Chairs never came up it was always 1 or 2, however the Commission did not make a restriction on the number of chairs during their meeting.

Mr. Medori stated that he may be able to submit an addendum to his lease with the tenant that states that no more than 2 of the chairs may be operating at any given time.

Chairman Chalfant asked Mr. Medori if the handicap ramp was discussed at the Planning Commission Meeting.

Mr. Medori responded saying that the Planning Commission stated that installing a handicap ramp was required for ADA Compliance and that there is not legal way around not installing the ramp.

Chairman Chalfant asked if the ramp was a part of the original plan for the property.

Mr. Medori acknowledged that it was not however permits were secured from the Code Enforcement Office for the construction of the ramp.

Member Personti asked Code Enforcement Office Keith Brown if Handicap Ramps count as lot coverage on a property.

Office Keith Brown Stated that he is not aware if they are exempt from lot coverage.

Mr. Carlson stated that a structure as massive as the ramp that was constructed should have been considered because of the amount of the lot that this does take up.

Office Keith Brown stated that as long as the ramp met federal requirements he can not regulate the design of the ramp.

Mr. Mark Medori the contractor for the project wanted to clarify regarding the handicap ramp, the federal requirement is that for every one inch of rise the ramp must be 1 foot long, he stated that he did try to lay the ramp out in multiple different designs to decide which would be less impact on the area and this was the only possible solution where they would be able to gain access to both portions of the building with the least amount of lot coverage. He did state that the structure is a massive structure however he feels that this was the best way to construct it.

Chairman Chalfant asked Mr. Medori to please step back up to the Podium. He stated that the look of the building has improved and looks good however he needs to clarify the number of chairs in the barber shop.

Mr. Medori declared that the only way to ease the Boards concerns would be to create the addendum to the lease limiting them to only two barbers per shift however he is not able to mandate that they share stations, and believes that this may be a sanitation regulation.

Mr. Personti stated that he is concerned with the number of stations because if it gets busy there is nothing to stop the barber from calling someone in a having all four stations operating at any given time.

1st District Councilman John Jaremchuk stated he was present at the Planning Commission Meeting, however the Commissions recommendation does not place a restriction on the number of chairs they are permitted to have then the Board has the authority if it so desires to put that restriction in place where is states that there may be no more than 2 chairs operating at any given time.

Jeanette Waters, Accountant for the Country Health Store, asked if the Board would be able to approve the petition on a probationary period to evaluate the parking impact because there is not guarantee on the customer base.

Mr. Bill Fincher of Bellvue Realty represented the Country Health Store in securing the property as the new location, he feels that the parking requirements are for retail space and only 900 sq. ft. of the store will be retail space therefore wouldn't the restriction change for the office space.

Mr. Carlson stated that he has no objection to the Country Health Store being permitted to occupy the structure, he is concerned with the barber shop and the number of chairs and the number of customers that may sit in the waiting area.

Councilmember Jaremchuk stated that if the Board were to approve this petition with his previously mentioned restriction the Town would be able to enforce it and the Variance would then be subject to revocation.

2nd District Councilwoman Pat Frantz stated that the building is a large improvement to what it was however she agrees with Councilmember Jaremchuk that a restriction should be put into place so that the Town would be able to enforce it.

Chairman Chalfant asked if there were any further public comments.

Town Manager Giles stated that it is not about the number of chairs that are in the business it is about the number of employees who are actively engaged in the cutting of hair.

ACTION: A motion was made by Board Member Personti to Approve Petition 08-10 regarding tax parcel number 1900-500-042 known as 601 Kirkwood Hwy with the restrictions set forth by the Planning Commission and that a new restriction be places limiting only two active chairs in the barber shop at any given time. The motion was seconded by Board Member Smith.

VOTE:

All in favor Vote: 4-0 with 1 Absent Motion Carried

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:

None

PUBLIC COMMENT:

None

ADJOURNMENT:

ACTION: A motion was made by Board Member Mitchell to adjourn. The motion was seconded by Board Member Personti.

VOTE:

Board Member Mitchell – Yes
Board Member Personti – Yes
Board Member Smith – Yes
Board Member Manuel – Yes
Chairman Chalfant – Yes

VOTE: 5 – 0, with 0 – Absent, Motion carried

At this time the meeting was adjourned.

These minutes summarize the agenda items and other issues discussed at the October 15, 2008 Board of Adjustment Meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.

PAUL CHALFANT, CHAIRMAN

JAMES PERSONTI, SECRETARY